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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10
11 CORY SPENCER, an individual; DIANA
MILENA REED, an individual; and
12 COASTAL PROTECTION RANGERS,
INC., a California non-profit public
13 benefit corporation,

14 Plaintiff,

15 vs.

16 LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF THE
17 LUNADA BAY BOYS, including but not
limited to SANG LEE, BRANT
18 BLAKEMAN, ALAN JOHNSTON AKA
JALIAN JOHNSTON, MICHAEL RAE
19 PAPAYANS, ANGELO FERRARA,
FRANK FERRARA, CHARLIE
20 FERRARA; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
21 KEPLEY, in his representative capacity;
and DOES 1-10,

22 Defendants.
23

Case No. 2:16-cv-2129

Judge: Hon. S. James Otero
Dept: Courtroom 10C

Magistrate Judge:
Hon. Rozella A. Oliver

24 **STATEMENT OF**
UNCONTROVERTED FACTS
AND CONCLUSIONS OF LAW IN
SUPPORT OF CHARLIE
FERRARA'S MOTION FOR
SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT

25 *[Filed concurrently with Notice of*
Motion; Memorandum of Points and
Authorities; Request for Judicial
Notice of Adjudicative Facts;
Declaration of Tiffany Bacon; and
[Proposed] Judgment lodged
herewith]

26 Date: August 21, 2017
Time: 10:00 a.m.
Dept: Courtroom 10C

27 Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

**STATEMENT OF UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN SUPPORT OF DEFENDANT CHARLIE
FERRARA’S (hereinafter “Charlie Ferrara” or “Defendant”) MOTION FOR
SUMMARY JUDGMENT AGAINST PLAINTIFFS, CORY SPENCER
 (“Spencer”), DIANA MILENA REED (“Reed”) and COASTAL
PROTECTION RANGERS, INC. (“CPR”) (collectively, “Plaintiffs”):**

ISSUE 1: Defendant is entitled to Summary Judgment on all of Plaintiffs’
claims, including Bane Act, Public Nuisance, Assault, Battery, and Negligence, as
Plaintiffs’ claims are without merit.

UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW	SUPPORTING EVIDENCE IN SUPPORT OF UNCONTROVERTED FACTS
1. Charlie Ferrara is the son of Defendant Frank Ferrara.	Declaration of Tiffany Bacon (“Bacon Decl.”), Ex. K (hereinafter “C. Ferrara Dep.”) at 17:7-17:8.
2. Charlie Ferrara is the nephew to Defendant Angelo Ferrara and the cousin to Defendant N.F. Defendant Angelo Ferrara is also the father to non-party Leo Ferrara.	C. Ferrara Dep. at 18:2-18:19.
3. Charlie Ferrara was in the presence of Plaintiff Reed on only two occasions prior to the filing of this action. The first was on February 13, 2016; however, he was not involved in the interactions she had with other individuals on that day. The second time was a couple of months	C. Ferrara Dep. at 117:19-131:21; 134:20-136:20.

1	UNCONTROVERTED FACTS AND	SUPPORTING EVIDENCE IN
2	CONCLUSIONS OF LAW	SUPPORT OF UNCONTROVERTED
3		FACTS
4	after February 2016, where he saw	
5	Plaintiff Reed sitting at the patio at	
6	Lunada Bay but did not say anything to	
7	her.	
8	4. Charlie Ferrara has never met Plaintiff	C. Ferrara Dep. at 175:5-175:8.
9	Spencer.	
10	5. Prior to January of 2016, Plaintiff	Bacon Decl., Ex. L (hereinafter "Spencer
11	Spencer never surfed at Lunada Bay.	Dep.") at 62:10-62:22.
12	6. Plaintiff Spencer is unable to	Spencer Dep. at 219:9-219:20.
13	distinguish one member of the Ferrara	
14	family from the next.	
15	7. Plaintiff Reed never surfed at Lunada	Bacon Decl., Ex. M (hereinafter "Reed
16	Bay prior to January of 2016.	Dep.") at 104:23-105:6.
17	8. On February 13, 2016, Plaintiff Reed	Reed Dep. at 181:9-183:9; 202:24-204:9;
18	visited the patio down at Lunada Bay.	301:21-304:1; C. Ferrara Dep. at 117:19-
19		131:21.
20	9. Charlie Ferrara was near the corner of	C. Ferrara Dep. at 117:19-131:21.
21	the patio at Lunada Bay on February 13,	
22	2016, in the morning, getting ready to go	
23	surfing.	
24	10. Charlie Ferrara observed Plaintiff	C. Ferrara Dep. at 117:19-131:21.
25	Reed, a second woman, Defendant Brant	
26	Blakeman and Defendant Alan Johnston	
27	on the patio that morning of February 13,	
28		

1	UNCONTROVERTED FACTS AND	SUPPORTING EVIDENCE IN
2	CONCLUSIONS OF LAW	SUPPORT OF UNCONTROVERTED
3		FACTS
4	2016 at Lunada Bay.	
5	11. Charlie Ferrara did not participate in	C. Ferrara Dep. at 120:5-134:8.
6	the interaction that took place between	
7	Plaintiff Reed, Defendant Brant	
8	Blakeman, Defendant Alan Johnston and	
9	the other person and did not hear the	
10	words that were exchanged among the	
11	group.	
12	12. On February 13, 2016, Charlie	C. Ferrara Dep. at 117:19-123:18.
13	Ferrara was only concerned about getting	
14	in the water to surf because he had a	
15	short amount of time to do so before he	
16	had to go to work.	
17	13. When Charlie Ferrara returned to the	C. Ferrara Dep. at 124:24-128:21.
18	beach from surfing, there were two	
19	police officers present.	
20	14. Plaintiff Reed recorded a	Reed Dep. at 270:21-271:4.
21	conversation she claims was between her	
22	and Charlie Ferrara.	
23	15. The man speaking in the recording is	Bacon Decl., Ex. N (hereinafter "Leo
24	actually Charlie Ferrara's cousin, Leo	Decl.>").
25	Ferrara.	
26	16. Defendant N.F., Leo Ferrara's	Bacon Decl., Ex. O (hereinafter N.F.
27	brother, identified Leo Ferrara's voice in	Dep.") at 142:24 – 143:9.
28		

1	UNCONTROVERTED FACTS AND	SUPPORTING EVIDENCE IN
2	CONCLUSIONS OF LAW	SUPPORT OF UNCONTROVERTED
3		FACTS
4	the recording.	
5	17. Leo Ferrara states in the recording	Bacon Decl., Ex. P (hereinafter "Reed
6	that he lives on the Palos Verdes	Recording"); Bacon Decl., Ex. S
7	peninsula and that his father works on	(hereinafter "Recording Transcript") at 3.
8	cars.	
9	18. Defendant Angelo Ferrara, Leo	Bacon Decl., Ex. Q (hereinafter "Angelo
10	Ferrara's father, lives in Palos Verdes	Dep.") at 9:8-9:15.
11	Estates at the time of the recording.	
12	19. Defendant Frank Ferrara, Charlie	Bacon Decl., Ex. R (hereinafter "F.
13	Ferrara's father, lives in Wildomar.	Ferrara Dep.") at 18:2-18:3.
14	20. Charlie Ferrara lives in San Pedro,	C. Ferrara Dep. at 16:3-16:17.
15	and previously lived with his parents in	
16	Wildomar.	
17	21. Defendant Frank Ferrara does not	F. Ferrara Dep. at 37:3 – 39:14; C.
18	work on cars; he is in car sales.	Ferrara Dep. at 17:7-17:13.
19	22. Defendant Angelo Ferrara owns an	C. Ferrara Dep. at 18:2-18:6.
20	auto paint and body shop.	
21	23. Ken Claypool could not identify	Bacon Decl., Ex. U (hereinafter
22	Charlie Ferrara, stating he would "have	"Claypool Dep.") at 48:3-48:24, 49:10-
23	to see pictures and determine actually	50:6.
24	who's who" of the defendants.	
25	24. Mr. Claypool misidentified Charlie	Claypool Dep. at 90:25-91:3; Bacon
26	Ferrara as having dark hair, when in fact	Decl., Ex. T (hereinafter "Charlie
27	Charlie Ferrara has blonde hair.	Photo").
28		

1	UNCONTROVERTED FACTS AND	SUPPORTING EVIDENCE IN
2	CONCLUSIONS OF LAW	SUPPORT OF UNCONTROVERTED
3		FACTS
4	25. Ken Claypool did not testify to ever	Claypool Dep. at 51:19-53:6; 91:4-91:16.
5	witnessing Charlie Ferrara threaten or	
6	intimidate anyone at Lunada Bay, engage	
7	in any wrongful behavior at Lunada Bay,	
8	or be involved in any physical altercation	
9	with anyone at Lunada Bay.	
10	26. Mr. Claypool never had any	Claypool Dep. at 52:4-52:13.
11	conversations with Plaintiff Reed or	
12	Plaintiff Spencer about any actions of	
13	Charlie Ferrara at Lunada Bay.	
14	27. Mr. Claypool's knowledge of	Claypool Dep. at 88:8-89:25.
15	Charlie Ferrara comes not from personal	
16	experiences with him, but rather from	
17	Facebook posts and gossip.	
18	28. Mr. Claypool testified he only heard	Claypool Dep. at 89:3-89:25.
19	secondhand Charlie Ferrara was one of	
20	the individuals that harassed Plaintiff	
21	Reed, not that he had any personal	
22	knowledge of relevant facts.	
23	29. Jim Russi has no knowledge of	Bacon Decl., Ex. V (hereinafter "Russi
24	Charlie Ferrara engaging in any wrongful	Decl.")).
25	conduct at or near Lunada Bay nor	
26	Charlie Ferrara being involved in any	
27	illegal activity at or near Lunada Bay.	
28		

1	UNCONTROVERTED FACTS AND	SUPPORTING EVIDENCE IN
2	CONCLUSIONS OF LAW	SUPPORT OF UNCONTROVERTED
3		FACTS
4	30. Plaintiffs have not provided a single	Bacon Decl., Ex. W; Leo Decl.; N.F.
5	discovery response tying any action or	Dep. at 142:25 – 143:9.
6	inaction of Charlie Ferrara to Plaintiffs’	
7	claimed damages in this case. Plaintiffs	
8	rely on the 13-minute recording between	
9	Plaintiff Reed and Leo Ferrara, which	
10	does not contain the voice of Charlie	
11	Ferrara.	
12	31. Defendant Sang Lee testified that	Bacon Decl., Ex. X (hereinafter “Lee
13	Charlie Ferrara has never had any	Dep.”) at 295:6-295:25.
14	communications with him about	
15	preventing persons from visiting Lunada	
16	Bay, or any communications about	
17	preventing persons from surfing at	
18	Lunada Bay.	
19	32. Charlie Ferrara testified that he has	C. Ferrara Dep. at 47:25-48:21.
20	communicated with Defendant Sang Lee,	
21	by telephone, regarding some work that	
22	Defendant Sang Lee provided for him for	
23	roofing in 2014.	
24	33. Charlie Ferrara has not	C. Ferrara Dep. at 47:25-50:21.
25	communicated with any other defendant	
26	in any manner to support Plaintiffs’	
27	claims in this case.	
28		

**UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW**

**SUPPORTING EVIDENCE IN
SUPPORT OF UNCONTROVERTED
FACTS**

34. Defendant Sang Lee has never
witnessed Charlie Ferrara attempting to
prevent persons from visiting or surfing
Lunada Bay.

Lee Dep. at 295:6-295:25.

Alternatively, Charlie Ferrara requests partial summary judgment on the
following causes of action only:

ISSUE 2: Defendant is entitled to Partial Summary Judgment on Plaintiffs'
First Cause of Action for Bane Act, as Plaintiffs' claim is without merit.

**UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW**

**SUPPORTING EVIDENCE IN
SUPPORT OF UNCONTROVERTED
FACTS**

Charlie Ferrara incorporates
Uncontroverted Facts and Conclusions of
Law Nos. 1 through 34 by this reference
as though fully set forth herein.

Charlie Ferrara incorporates Supporting
Evidence to Uncontroverted Facts and
Conclusions of Law Nos. 1 through 34
by this reference as though fully set forth
herein.

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1 **ISSUE 3:** Defendant is entitled to Partial Summary Judgment on Plaintiffs'
 2 Second Cause of Action for Public Nuisance, as Plaintiffs' claim is without merit.

3 UNCONTROVERTED FACTS AND	4 SUPPORTING EVIDENCE IN
5 CONCLUSIONS OF LAW	6 SUPPORT OF UNCONTROVERTED
7 Charlie Ferrara incorporates	8 Charlie Ferrara incorporates Supporting
9 Uncontroverted Facts and Conclusions of	10 Evidence to Uncontroverted Facts and
11 Law Nos. 1 through 34 by this reference	12 Conclusions of Law Nos. 1 through 34
13 as though fully set forth herein.	14 by this reference as though fully set forth
	15 herein.

16 **ISSUE 4:** Defendant is entitled to Partial Summary Judgment on Plaintiffs'
 17 Sixth Cause of Action for Assault, as Plaintiffs' claim is without merit.

18 UNCONTROVERTED FACTS AND	19 SUPPORTING EVIDENCE IN
20 CONCLUSIONS OF LAW	21 SUPPORT OF UNCONTROVERTED
22 Charlie Ferrara incorporates	23 Charlie Ferrara incorporates Supporting
24 Uncontroverted Facts and Conclusions of	25 Evidence to Uncontroverted Facts and
26 Law Nos. 1 through 34 by this reference	27 Conclusions of Law Nos. 1 through 34
28 as though fully set forth herein.	29 by this reference as though fully set forth
	30 herein.

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1 **ISSUE 5:** Defendant is entitled to Partial Summary Judgment on Plaintiffs'
2 Seventh Cause of Action for Battery, as Plaintiffs' claim is without merit.

3 UNCONTROVERTED FACTS AND	SUPPORTING EVIDENCE IN
4 CONCLUSIONS OF LAW	SUPPORT OF UNCONTROVERTED
5	FACTS
6 Charlie Ferrara incorporates	Charlie Ferrara incorporates Supporting
7 Uncontroverted Facts and Conclusions of	Evidence to Uncontroverted Facts and
8 Law Nos. 1 through 34 by this reference	Conclusions of Law Nos. 1 through 34
9 as though fully set forth herein.	by this reference as though fully set forth
10	herein.

11
12 Dated: July 21, 2017

BREMER WHYTE BROWN & O'MEARA
LLP

13
14 By: 

15 Alison K. Hurley
16 Tiffany L. Bacon
17 Attorneys for Defendants
18 FRANK FERRARA and CHARLIE
19 FERRARA
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PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 20320 S.W. Birch Street, Second Floor, Newport Beach, California 92660.

On July 24, 2017, I served the within document(s) described as:

STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN SUPPORT OF CHARLIE FERRARA'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

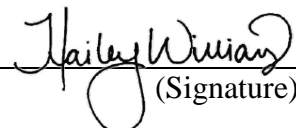
on the interested parties in this action as stated on the attached mailing list.

☒ (BY ELECTRONIC SERVICE) Complying with Code of Civil Procedure § 1010, I caused such document(s) to be Electronically Filed and Served through the _for the above-entitled case. Upon completion of transmission of said document(s), a filing receipt is issued to the filing party acknowledging receipt, filing and service by 's system. A copy of the [Email receipt System] filing receipt page will be maintained with the original document(s) in our office.

Executed on July 24, 2017, at Newport Beach, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Hailey Williams
(Type or print name)


(Signature)

Cory Spencer v. Lunada Bay Boys et al.,

Case No. 2:16-cv-2129-SJO

BWB&O CLIENT: Frank and Charlie Ferrara
BWB&O FILE NO.: 1178.176

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